

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.979 of 1986

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1. Jitendra Kumar Singh, son of late Ram Pravesh Singh
 2. Bishwanath Singh, son of late Sheo Pd. Singh,
 3. Parmatma Singh, son of late Kapildeo Singh
 4. Vijay Kumar Singh, son of late Satya Narayan Singh
 5. Chandra Shekhar Singh, son of late Chandra Sekhar Singh
 6. Krishna Nand Singh, son of late Kamaldeo Singh
 7. Rabindra Singh, son of late Jamadar Singh

All residents of Village Simaria Tola Kolasi, P.S.- Korha, District- Katihar.
..... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Katihar.
3. The Additinoal Collector, Katihar,
4. The Subdivisional Officer, Katihar.
5. The Circle Officer, Korha, P.S.- Korha, District- Katihar.

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar, Advocate.

For the Respondent/s : Mr. Anjani Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

20 30-01-2015

Heard learned counsel for the parties as with regard to

the following relief prayed in this writ application:

"1. That this writ application is directed against the order dated 09.12.1985 (Annexure-4) by which the Additional Collector, Katihar (respondent no. 3) allowed the Land Encroachment Appeal No. 398/81 with respect to 15.38 acres of land detailed therein holding that the petitioners have encroached upon the land in question, after setting aside the order of the Circle Officer, Korha (respondent no. 5) dated 1.10.1981 (Annexure-3) by which it was held that the land did not belong to the Government; rather it belonged to the petitioners and as such there was no question of any encroachment on the disputed land by the petitioners."



2. As would be apparent from the aforementioned prayer and in fact as also submitted by Mr. Ajay Kumar, learned counsel for the petitioners that such a complicated question of right, title and possession relating to the land of the petitioners could not have been gone into in a summary proceedings under Bihar Public Land Encroachment Act. In this regard, he relies on the judgment of the Apex Court in the case of ***Government of Andhra Pradesh vs. Thummala Krishna Rao & Another*** reported in ***AIR 1982 SC 1081***.

3. learned counsel for the State does not dispute the proposition of law that a complicated question of right, title and interest in a land cannot be decided in a summary proceeding, but what he really want to give emphasis is that the claim of the petitioners with regard to land in question based on the sale deed will not confer them any in title because such sale deed was executed in respect of a plot which was not part of the compromise petition between the State of Bihar and the Bhaduriya Estate recorded by this Court in M.J.C. No. 507 of 1955.

4. As would now appear from very tenure of the submission of the learned counsel for the State, three things come to the forefront. Firstly, the petitioners claim to be a purchaser from Bhaduriya Estate which had a 'right' to possess land prior to



vesting of the Jamindari. Secondly, Bhaduriya Estate, in a litigation with the State of Bihar in this Court, had entered into a compromise with regard to certain piece of land and, therefore, whether the petitioners' land was covered by said compromise or the petitioners could have a right even otherwise in the land conveyed to them by their vendor has to be determined in the light of the evidence led by the parties. Thirdly and finally, whether the State Government or its authorities empowered to act under the Bihar Public Land Encroachment Act in the name of removal of encroachment or go into the question of right, title and interest and invalidate the sale deed on the basis of which the alleged encroacher claims his rights.

5. It is this aspect of the matter, it was gone into by the Apex Court in the case of **Thummala Krishna Rao** (supra) wherein after a detail discussion as also keeping in view of the limited scope of proceedings under Bihar Public Land Encroachment Act, it was held as follows:

"7.It seems to us clear from these provisions that the summary remedy for eviction which is provided for by Section 6 of the Act can be resorted to by the Government only against persons who are in unauthorised occupation of any land which is "the property of Government". In regard to property described in sub-sections (1) and (2) of Section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in Section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in Unauthorised occupation of property which is declared by Sec. 2 to be the



property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act. But Section 6 (1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorised occupation of a land "for which he is liable to pay assessment under Section 3." Section 3, in turn, refers to unauthorised occupation of any land "which is the property of Government". If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that, the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than twelve years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for evicting the respondents.

8. The view of the Division Bench that the summary remedy provided for by S. 6 cannot be resorted to unless the alleged encroachment is of "a very recent origin", cannot be stretched too far. That was also the view taken by the learned single Judge himself in another case which is reported in *Mehrunnissa Begum v. State of A. P.*, (1970) 1 Andh LT 88 which was affirmed by a Division Bench (1971) 1 Andh LT 292: (AIR 1971 Andh Pra 382). It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in

occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law.

9. The conspectus of facts in the instant case justifies the view that the question as to the title to the three plots cannot appropriately be decided in a summary inquiry contemplated by Ss. 6 and 7 of the Act. The long possession of the respondents and their predecessor-in-title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to the family of Nawab Habibuddin from whom the respondents claim to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession must be decided in a properly constituted suit. May be, that the Government may succeed in establishing its title to the property but, until that is done, the respondents cannot be evicted summarily.

6. This Court, however, must make it clear that in the present case, neither the compromise was made with the petitioners nor in presence of the petitioners and the petitioners claim their right, title and interest under the Bhaduriya Estate, which had actually entered into compromise with the State of Bihar in M.J.C. No. 507 of 1955 disposed of by this Court on 28.01.1958.

7. The petitioners, in fact, were the purchasers from Bhaduriya Estate under registered sale deeds dated 13.11.1962 and 27.04.1965. Therefore, if the petitioners now have been sought to be evicted, which has in fact the effect of nullifying the validity of the aforesaid two registered sale deeds, they ought to have and in fact still now can move the competent civil court not against the

two orders under the Public Land Encroachment Act but for seeking their right, title and interest by impleading the State of Bihar and its officials, who had sought to evict and threaten them with order of ejectment.

8. In the event, such a civil suit is filed by the petitioner, the State of Bihar will have the full liberty to lead evidence, as with regard to the aforementioned compromise petition, not giving any scope to the petitioners to claim right, title and interest in view of the limited right remaining with the Bhaduriya Estate to part with only four plots as claimed in the compromise petition.

9. This Court, therefore, in the interest of justice and also having regard to the fact that the present writ application has remained pending for the last 29 years, would give liberty to the petitioners to file civil suit within a period of three months from today and if they do so, seeking their right, title and interest in the property, in question, from which they were sought to be evicted. For this period of three months, i.e. till the date of filing of the civil suit, the respondents are restrained from interfering with the peaceful possession of the petitioners, but after such a civil suit is filed, the petitioners may also make a prayer for injunction in the civil suit.

10. At this stage, learned counsel for the State has submitted that this much must be clarified that whatever has been stated in this order, will not in any way come in the way of the State in opposing the interim relief and/or grant of injunction in the event of filing of civil suit.

11. Such submission of the learned counsel for the State has to be noted only for being rejected because the State will not be entitled to take benefit of the impugned order of removal of encroachment passed against the petitioners by the appellate authority because the sale deed was executed in favour of the petitioners way back in the year 1962 and 1965 and encroachment proceeding was started against the petitioner in the year 1981 and, therefore, if the petitioners' possession had remained unquestioned for a period of more than 15 to 17 years that could not have been lightly dealt with or much less disturbed on the basis of an order of encroachment proceeding. Therefore, when such a prayer is made by the petitioners for grant of injunction, the civil court will go into the question of all the three requirements for grant of injunction i.e. prima facie case, balance of evidence and irreparable loss and would take its own decision after hearing both the parties.

12. It is also made clear that whatever has been stated above in this order by this Court is only in answer to the submission made before this Court and these observation in no way will weigh upon the civil court in taking its own decision on merit while deciding the civil suit in accordance with law.

13. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

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